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9 Liaison Counsel and Attorneys for  
10 BOARD OF RETIREMENT OF ORANGE COUNTY  
11 EMPLOYEES RETIREMENT SYSTEM

12 *Exempt from filing fees pursuant to Gov't Code §6103*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

Coordination Proceeding

Special Title (Rule 1550(b))

RETIREMENT CASES

JUDICIAL COUNCIL COORDINATION  
PROCEEDING NO. 4049

NOTICE OF PROPOSED SETTLEMENT AND FAIRNESS  
HEARING IN ORANGE COUNTY SUPERIOR COURT CASE  
NOS. 791315 AND 791499

Date: November 1, 2002  
Time: 3:30 p.m.  
Dept: 304  
Judge: Hon. Stuart R. Pollak

Orange County Superior Court Case Nos. 791315 and  
791499

NOTICE TO CLASS MEMBERS  
IMPORTANT NOTICE ABOUT YOUR PENSION RIGHTS FROM THE  
SAN FRANCISCO SUPERIOR COURT

The Court has approved sending you this Notice to advise you of your rights under a proposed Settlement Agreement that may affect your rights. Please read this entire Notice carefully. It discusses the proposed settlement of a class action lawsuit involving the amount of compensation that is to be used for purposes of calculating your retirement allowance. If you are an active or retired member of the Orange County Employees Retirement System ("OCERS"), including a deferred retiree, or if you are a survivor, beneficiary, or successor in interest of a retired member of OCERS, your rights may be affected by the legal proceedings described below.

This is not a Notice of a lawsuit filed against you. It is Notice that you may be eligible for certain benefits of the proposed settlement. No retirement allowances correctly calculated in accordance with current OCERS resolutions will be reduced or increased as a result of the Settlement Agreement. You do not need to do anything at this time to receive the benefits of this proposed settlement. If the settlement is approved by the Court and you are a person who is receiving or may become eligible in the future to receive retirement allowances from OCERS, the settlement will be binding on you whether you object or not, because you are being given certain benefits in exchange for giving up certain claims made on your behalf in this lawsuit.

If you have any objections to the terms of the Settlement, you have the right to appear and speak at a hearing conducted by the San Francisco Superior Court on November 1, 2002 in Department 304 at 3:30 p.m., to decide whether or not to approve the proposed Settlement Agreement. In order to be heard, you must follow the procedures set forth in this Notice.

Copies of the Settlement Agreement are available for your review at the following locations: (1) OCERS' offices, 2223 Wellington Avenue, Santa Ana, CA 92701; (2) Silver, Hadden & Silver, 1428 Second Street, Santa

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San Francisco County Superior Court

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GORDON PARK-LI, Clerk  
BY: ANDREA CARNEY  
Deputy Clerk

1 Monica, CA 90407-2161; and (3) the Orange County Hall of Administration, 10 Civic Center Plaza, 2d Floor, Santa  
2 Ana, CA 92702-1379. In addition, the Settlement Agreement will be available for your review through, at a  
3 minimum, November 1, 2002, through a link on OCERS' website at [www.ocers.org](http://www.ocers.org), as well as a link on Orange  
4 County's website at [www.oc.ca.gov](http://www.oc.ca.gov).

5 This Notice includes the following important information:

- 6 1. An explanation of why you have received this Notice.
- 7 2. A description of who is included in the class, and the choices that you need to make now.
- 8 3. A brief description of the legal proceedings that led to this proposed settlement.
- 9 4. A description of the terms and methodology of the proposed settlement including the  
10 benefits offered to class members.
- 11 5. The release of claims that will apply to all class members.
- 12 6. An explanation of your rights as a class member, including how you can object to the  
13 terms of the proposed settlement.
- 14 7. Whom to contact if you have questions or want additional information.

### 15 **SECTION 1: WHY YOU HAVE BEEN SENT THIS NOTICE**

16 You have been sent this Notice because you may be a member of a class whose interests may be affected by  
17 the proposed settlement of a class action lawsuit. The lawsuit includes the following two related cases that were filed  
18 in Orange County Superior Court in 1998 (referred to collectively herein as the "Orange County Cases"): (1) a suit  
19 for declaratory relief (Orange County Superior Court case number 791315) filed by the Board of Retirement of  
20 OCERS against Jan J. Nolan ("Nolan"), Eric W. Snethen ("Snethen"), The Orange County Attorneys Association  
21 ("OCAA") and the County of Orange ("County"), as to which the County filed a Cross-Complaint against OCERS  
22 and Orange County Employees Association ("OCEA") and the Retired Employees' Association of Orange County,  
23 Inc. ("REAOC") filed Complaints in Intervention in the case; and (2) a suit filed by OCAA, Nolan, and Snethen  
24 against OCERS (Orange County Superior Court case number 791499). The members of the class in the Orange  
25 County Cases consist of all past, present and future members of OCERS, including retirees, deferred retirees, and  
26 active employees, and all of the members' survivors, beneficiaries, agents, assigns and successors in interest ("Class  
27 Members"). The lawsuit concerned the inclusions in and the exclusions from compensation earnable used in  
28 calculating the retirement allowances of members of OCERS and their beneficiaries.

Although the proposed settlement has not yet been finally approved, the Court has determined that the  
proposed settlement is sufficient to warrant providing this Notice to you as a potential Class Member. The purpose  
of this Notice is to advise you of the benefits that will be offered under the proposed settlement, so that you can  
decide whether you wish to oppose the proposed settlement by submitting objections in the manner set forth below  
and requesting the Court to reject the proposed settlement.

The San Francisco Superior Court (Hon. Stuart Pollak) will hold a hearing on **November 1, 2002 at 3:30  
p.m.** in Department 304, at the Civic Center Courthouse, 400 McAllister Street, San Francisco, CA 94102 to  
determine whether the proposed settlement is fair and reasonable and should be approved ("Fairness Hearing"). If  
the Court approves the proposed settlement, it will enter a Final Judgment and all Class Members, including you, will  
be bound by the terms of the settlement. No past, present or future member of OCERS, labor organization  
representing members, or any beneficiary or successor in interest will be able to file a further claim for increased  
benefits based on issues that were raised, or could have been raised, in the Orange County Cases even if other courts,  
deciding similar issues with regard to other county retirement systems, interpret or apply the law differently.

### 23 **SECTION 2: BACKGROUND TO THE SETTLEMENT**

24 Under applicable law, when a member of OCERS retires, his or her retirement allowance is calculated on  
25 the basis of the member's "compensation earnable" during his or her "final compensation period," which is the one  
26 or three year period selected by the member, or, if no period is selected, then it is the last year or three years of  
27 employment. Whether these periods are one or three years depends upon whether the member was a Tier I or Tier II  
28 employee.

In 1983, a California Court of Appeal ruled that pay items to be included in "compensation earnable" should  
be limited to only those items of compensation uniformly paid in cash to all members in a given employment  
classification. Under this ruling, the Court excluded from the calculation of retirement allowances compensation  
such as bilingual pay, educational incentive pay, automobile and uniform allowances, and other additional pay which  
was not provided on a uniform basis to all employees in a designated classification, but was paid only to employees  
who had special qualifications or assignments or met other special conditions.



1 On August 14, 1997, the California Supreme Court in Ventura County Deputy Sheriffs' Association v.  
2 Ventura County Employees' Retirement Board, 16 Cal. 4th 483, ("Ventura") ruled that the earlier interpretation of  
the Court of Appeal was incorrect on this point, and that cash payments made to employees should be included in  
pension calculations even if they were not provided to all employees in a designated classification on a uniform basis.

3 The Ventura decision, which became final on October 1, 1997, left a number of issues in dispute, including  
4 which members were affected by the decision, whether or not the decision should be applied retroactively to  
previously retired members, and how to treat non-recurring payments (especially those paid only in connection with  
the termination of employment) and/or payments to third parties that were not paid directly to the employee. After  
5 Ventura, OCERS decided that the cash payments that Ventura required to be included in compensation earnable (and  
final compensation) would be added to the retirement calculations of all of its members, whether active or retired.  
6 OCERS adjusted the monthly retirement allowances of previously retired members and their beneficiaries for the  
preceding three years, and for all members and beneficiaries going forward. OCERS also determined that it would  
7 not be necessary to collect arrears contributions from members and to use excess earnings of the retirement system to  
help defray the cost of funding the additional benefits. OCERS further determined that "compensation earnable" and  
8 "final compensation" properly include cash payments for unused paid leave benefits, such as annual vacation, and  
sick leave, to the extent those benefits were both earned and cashable during a member's final compensation period.  
9 In addition, OCERS determined that cash paid by an employer (i.e., plan sponsor) to a third party on behalf of an  
employee (i.e., plan member), but not paid directly to the employee, such as health plan premiums and required  
10 employee retirement contributions, should not be included in "compensation earnable" and "final compensation."  
Finally, OCERS excluded from "compensation earnable" and "final compensation" cash received by a plan member  
under an optional benefit plan applicable to members of OCERS on or after January 1, 1991, in conformity with a  
11 resolution of the County Board of Supervisors. OCERS passed its Resolution 98-001, which is attached as Exhibit B  
to the Settlement Agreement to effect the changes to the compensation earnable and final compensation calculations.  
12 As a result of controversies arising out of OCERS' application of Ventura through its Resolutions 98-001 and its  
subsequent Resolution 98-009 (attached as Ex. C to the Settlement Agreement), the Orange County Cases were filed.

13 Similar actions were also filed in other counties across the State. On December 21, 1998, the California  
Judicial Council ordered that these actions be combined in a coordinated proceeding, and tried in the San Francisco  
14 Superior Court. The Superior Court later certified the Orange County Cases to be a class action, with the class  
consisting of all Class Members, so that all Class Members, as well as OCERS and the County, would be bound by  
the same decision. The Court appointed the OCEA, REAOC, OCAA, Nolan and Snethen and their attorneys, as  
15 applicable, as class representatives and class counsel respectively.

16 The named parties to this lawsuit have reached an agreement on the terms of a settlement. As a result of this  
agreement, application will be made to the Court for approval of the settlement on November 1, 2002. The parties  
17 and their counsel believe that, in consideration of all the circumstances, the proposed settlement is fair, reasonable,  
adequate, and in the best interests of all Class Members, OCERS, the County and other districts participating in  
18 OCERS who employ Class Members. The proposed settlement of the Orange County Cases, and the information  
contained in this Notice, are not an expression by the Court as to the merits of any of the claims or defenses asserted  
19 by any party in the action.

### 20 SECTION 3: COUNSEL FOR CLASS MEMBERS

21 Stephen H. Silver, Esq.  
Silver, Hadden & Silver  
1428 Second Street  
P.O. Box 2161  
Santa Monica, CA 90407-2161  
22 Telephone: (310) 393-1486  
Facsimile: (310) 395-5801  
23 Attorneys for Orange County Employees Association

24 Richard Rockwell, Esq.  
Rockwell & Meyer  
315 Centennial Way  
Tustin, CA 92780  
25 Attorneys for Retired Employees  
26 Association of Orange County

Paul Crost, Esq.  
Reich, Adell, Crost & Cvitan  
501 Shatto Pl, Suite 100  
Los Angeles, CA 90020  
Attorneys for Orange County Attorneys Association

Jan J. Nolan, Esq.  
23522 Long Meadow  
Mission Viejo, CA 92692  
Attorney in Pro Per

Eric W. Snethen, Esq.  
P.O. Box 742  
Searchlight, NV 89046-0742  
Attorney in Pro Per

1 **SECTION 4: COUNSEL FOR OCERS**

2 Harvey Leiderman, Esq.  
3 Ashley K. Dunning, Esq.  
4 STEEFEL, LEVITT & WEISS  
5 A Professional Corporation  
6 One Embarcadero Center, 30th Floor  
7 San Francisco, California 94111-3719  
8 Telephone: (415)788-0900  
9 Facsimile: (415) 788-2019

**SECTION 5: COUNSEL FOR THE COUNTY**

Benjamin P. de Mayo, County Counsel  
Deborah G. Gmeiner, Assistant County Counsel  
ORANGE COUNTY COUNSEL  
10 Civic Center Plaza, Fourth Floor  
P.O. Box 1379  
Santa Ana, CA 92702-1379  
Telephone: (714) 834-6294  
Facsimile: (714) 834-2359

6 **SECTION 6: DESCRIPTION OF THE SETTLEMENT**

7 **A. Judgment Entered In Accordance with Superior Court Rulings**

8 All of the parties to the Settlement Agreement in the Orange County Cases have agreed to seek entry of  
9 Judgment in the Orange County Cases in accordance with all of the Rulings and Orders ("Rulings and Orders")  
10 issued to date by the San Francisco Superior Court in Judicial Council Coordination Proceeding No. 4049 ("JCCP  
11 No. 4049"), as well as in accordance with OCERS' Resolution 98-001, as amended by OCERS' Resolution 00-003  
12 on December 18, 2000, and Resolution 98-009 ("Judgment"). The form of the unexecuted Judgment is attached to  
13 the Settlement Agreement as Exhibit A, with the Judgment's contemplated Exhibits 1-8. The Judgment's Exhibits 1-  
14 6 are copies of each of the Rulings and Orders. The Judgment's Exhibits 7-8 are the Resolutions that are attached to  
15 the Settlement Agreement as its Exhibit B and Exhibit C.

12 **B. Inclusions In and Exclusions From "Compensation Earnable"**

13 OCERS' Resolution 98-001, adopted by OCERS' Board of Retirement on February 6, 1998, identified  
14 "elements to be included in 'compensation earnable'" in its Paragraph no. 1, and "elements to be excluded from  
15 'compensation earnable'" in its Paragraph no. 2. OCERS' Resolution 98-009, adopted by OCERS' Board of  
16 Retirement on May 4, 1998, provided for the use of certain of OCERS' excess earnings to help defray the cost of  
17 increases in retirement allowances attributable to Resolution 98-001. Resolution 98-009 also amended Resolution  
18 98-001, by deleting the provisions in Resolution 98-001 regarding arrears contributions of active members and  
19 arrears contributions of retirees. Finally, on December 18, 2000, OCERS' Board approved the terms of a Partial  
20 Settlement Agreement and Release Claims entered into between OCERS and the County of Orange by adopting its  
21 Resolution 00-003, which amended OCERS' Resolution 98-001 to exclude the value of an automobile provided for  
22 personal use and declared as income, but not paid in cash, as an element of "compensation earnable" and "final  
23 compensation" for members whose final compensation periods do not include time prior to January 1, 2001.

24 By the terms of the Settlement Agreement, OCERS' Resolution 98-001, as amended by Resolution 00-003,  
25 and Resolution 98-009 shall remain valid and binding on all parties thereto, including all Class Members. In  
26 addition, the parties to the Settlement Agreement agree that entry of the Judgment will not require any modification  
27 of Resolutions 98-001 and 98-009, as currently effective.

28 No arrears contributions will be due from any member or beneficiary for the elements of pay included in  
"compensation earnable" and "final compensation" as a result of the Settlement Agreement. However, the rates of  
future employer and active employee contributions will reflect the additional items included in compensation  
earnable identified in Resolution 98-001, and as otherwise provided by law.

22 **C. Application of Settlement Agreement To Class Members**

23 Resolution 98-001 provides that OCERS shall apply its policies and guidelines regarding inclusions in and  
24 exclusions from "compensation earnable" and "final compensation" to all benefit payments made to members and  
25 their beneficiaries that were due on and after October 1, 1994, as timely requested by members retiring before  
26 October 1, 1997, and automatically for all members retiring thereafter. The Parties agree in the Settlement  
27 Agreement that OCERS' application of its Resolution 98-001 is consistent with the terms of this Settlement  
28 Agreement and the Judgment. Accordingly, no final compensation period or amount will be adjusted as a result of  
this Settlement Agreement or entry of the Judgment.

27 **D. Additional Retiree Benefits Account**

28 As provided in Exhibit D to the Settlement Agreement, the County and OCERS also intend to amend the  
existing Additional Retiree Benefits Account ("ARBA") Memorandum of Understanding ("ARBA MOU") so as to



provide, among other things, for an amount of funds to be transferred out of the current County ARBA into a separately identified Retiree Medical Benefit Reserve ("RMBR") in county advance reserves in the retirement system. The specific terms of the Amended ARBA MOU are set forth in Exhibit D.

**E. Attorneys' Fees and Costs**

All parties shall bear their own attorneys' fees and costs in connection with all aspects of Orange County Cases, including without limitation all attorneys' fees and costs in seeking Court approval of the Settlement Agreement, and the full implementation of the Settlement Agreement, except that the County has agreed to pay to Class Counsel, Silver, Hadden & Silver, attorneys' fees and costs in the amount of \$250,000.00. This payment shall constitute payment in full for all services already rendered and to be rendered by Class Counsel to the Class Members in connection with the Orange County Cases and the full implementation of this Settlement Agreement.

**SECTION 7: DISMISSAL AND RELEASE OF CLAIMS**

The Release of Claims (the "Release") that will apply to the Class Members as described in the Settlement Agreement is a critical element of the proposed settlement. If the proposed settlement is approved by the Court, then all of the claims and causes of action encompassed by the Release will be dismissed on the merits and with prejudice. None of those claims or causes of action can thereafter be asserted by you, or any other Class Member, in any other lawsuit or proceeding concerning retirement benefits.

If the Court does not approve the proposed settlement, then the Settlement Agreement will terminate, you will retain whatever rights (if any) you might have in the Orange County Cases, and the Orange County Cases will remain before the Court.

**SECTION 8: THE FAIRNESS HEARING AND OPTIONS OF CLASS MEMBERS**

Because of the nature of the present lawsuit, you will not have an opportunity to be excluded from the certified class. That means that if the Court approves the Settlement Agreement, you will be bound by it. You may, however, object to the terms of the proposed settlement.

If you object to the terms of the Settlement Agreement, you may appear in person or through your attorney, and be heard in opposition. You may object on the grounds of the fairness, reasonableness and adequacy of the settlement, including the payment of the attorneys' fees to the attorney for the Class representatives, the amount of those fees or on any other grounds. However, to object you must (1) be a Class Member; (2) formally state in writing your objections and the specific bases for your objections, including any legal support you wish to bring to the Court's attention and any supporting evidence; and (3) submit your objecting papers with the law firm of Silver, Hadden & Silver, co-counsel for the Class Members at the address appearing in Section 3 of this Notice for receipt no later than October 25, 2002.

You may also seek to intervene in the action as provided by law.

**SECTION 9: YOUR RIGHT TO APPEAR AT THE FAIRNESS HEARING**

As a Class Member, you may appear at the Fairness Hearing, either in person or through an attorney paid by you, in order to object to any aspect of the proposed settlement.

**SECTION 10: IF YOUR ADDRESS CHANGES**

To ensure that all Notices and other important documents are received by you, it is important for you to provide OCERS and Counsel for the Class Members with any change of your address. If your address changes, please notify OCERS in writing and notify Counsel for the Class Members in writing at the address provided above in Section 3.

**ALL OTHER QUESTIONS RELATING TO THE PROPOSED SETTLEMENT SHOULD BE DIRECTED TO COUNSEL FOR THE CLASS MEMBERS. PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE FOR INFORMATION.**

By Order of the Superior Court of the State of California for the City and County of San Francisco.

SEP 11 2002

Date: \_\_\_\_\_, 2002

**STUART R. POLLAK**

Honorable Stuart R. Pollak